

CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE
THIRD DEGREE
(B Felony)
(Intent to Sell One-eighth Ounce or
More of Methamphetamine)
PENAL LAW 220.16(7)
(Committed on or after Sept. 1, 1979)

The _____ count is Criminal Possession of a Controlled Substance in the Third Degree.

Under our law, a person is guilty of Criminal Possession of a Controlled Substance in the Third Degree when that person knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers] with the intent to sell it.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “possess,” “knowingly,” “unlawfully,” “aggregate weight,”¹ “sell,” and “intent.”

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.²

A person KNOWINGLY possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers] when that person is aware that he or she is in possession of such a substance in that quantity. Thus, the person must be aware both that the substance he or she is possessing contains *(specify)* and that, in the aggregate, the substance weighs one-eighth ounce or more.³

A person UNLAWFULLY possesses methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers] when that person has no legal right to

Where necessary, include the definition of “ounce” which means “an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids” (Penal Law § 220.00[3]).

See, Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction as found in the “Additional Charges” section at the end of this chapter.

See, Penal Law § 15.05(2) and *People v Ryan*, 82 NY2d 497 (1993).

possess it.⁴ Under our law, with certain exceptions not applicable here, a person has no legal right to possess methamphetamine [or methamphetamine salts [or methamphetamine isomers] [or salts of methamphetamine isomers].

AGGREGATE WEIGHT refers to the weight of the substance which contains the methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers], irrespective of the amount of the methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers] actually in the substance.⁵

SELL means to sell, exchange, give or dispose of to another, [or to offer or agree to do the same].⁶

INTENT means conscious objective or purpose.⁷ Thus, a person would have the intent to sell methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers] if that person's conscious objective or purpose was to sell methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers].

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), possessed one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine [or methamphetamine salts] [or methamphetamine isomers] [or salts of methamphetamine isomers];
2. That the defendant did so knowingly and unlawfully; and
3. That the defendant possessed the substance with the intent to sell it.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Possession of a Controlled Substance in the Third Degree as charged in the ___ count.

See, Penal Law § 220.00(2) and Public Health Law § 3396(1).

See, People v Mendoza, 81 NY2d 963, 965 (1993)

See, Penal Law § 220.00(1).

See, Penal Law § 15.05(1).